

Appln. No. 10/716,088
Amendment dated January 24, 2005
Reply to Office Action mailed October 22, 2004

REMARKS

Reconsideration is respectfully requested.

Claims 11 through 13 and 15 through 20 remain in this application. Claim 1 through 10 and 14 have been cancelled. No claims are presently withdrawn. Claim 21 has been added.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

Part 1 of the Office Action

The election of Species V of the invention, shown in Figures 8 and 9 and covered by claims 11 through 20, is hereby affirmed.

Parts 2 through 5 of the Office Action

Claims 11 through 13 and 15 have been rejected under 35 U.S.C. §102(b) as being anticipated by Bryant (5,192,041).

Claims 11 through 13 have been rejected under 35 U.S.C. §102(b) as being anticipated by Ghazizadeh (5,135,189).

Claim 14 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Ghazizadeh (5,135,189) in view of Veras (1,688,765).

Claims 16 through 19 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Bryant (5,192,041) in view of Suh (6,581,886).

Claim 11, particularly as amended, requires "wherein the bottle securing means includes a base pad comprising a cup and a resiliently compressible pad positioned in the cup", thus incorporating some elements of claim 13 and 14 as filed.

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In the Office Action, the rejection of claim 14 asserts that the elements of "a cup and resiliently compressible pad" of the claimed invention is obvious in view of the allegedly obvious combination of the Ghazizadeh and Veras patents. It is further contended in the Office Action that "[I]t would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Ghazizadeh's cup to include a compressible pad in order to protect the bottle to be held".

However, an examination of the Ghazizadeh patent does not reveal any perceived problem of damage to the bottle by the fingers of the gripper of Ghazizadeh. More importantly, there is nothing in the Veras patent that suggest that the "cushioning material" of the Veras patent would protect a bottle from damage. Veras states, in discussing the cushioning material, that (at page 1, lines 91 through 95):

A cushioning material 18 is arranged upon the inner surface of the strips comprising a ribbon or strip of fabric, such as felt, and secured to the strips 10 by rivets or eyelets 19.

Thus, minimizing damage to the bottle is not suggested by the Veras patent, and in fact one of ordinary skill in the art could be concerned that the "rivets or eyelets 19" used to attach the cushioning material of the Veras structure could in fact cause some scratching or damage to the surface of the bottle, rather than alleviating such damage. However, the law regarding obviousness is clear--any modification of the prior art must be suggested or motivated by the prior art:

'Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.' [citation omitted] Although couched in terms of combined teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious "modification" of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

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In re Fritch, 972 F.2d 1260; 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992), (in part quoting from ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577; 221 USPQ 929, 933 (Fed. Cir. 1984)).

It is therefore submitted that the art does not suggest the modification of the Ghazizadeh structure proposed in the rejection of the Office Action.

Further, and perhaps most importantly, it is submitted that the proposed modification of the Ghazizadeh structure to include the cushioning material on the fingers of the gripper of Ghazizadeh would impair the gripping function of the fingers. Ghazizadeh describes the function of the fingers in the following manner at col. 4, lines 31 through 43 (emphasis added):

The function of O-ring 62 is to compress fingers 34, 36, 38, and 40 inwardly in order to amplify the grip of such fingers upon the baby bottle inserted therebetween. It will be apparent to those skilled in the art that other means for compressing the fingers inwardly also may be used. Thus, for example, means 62 may comprise a cammed surface which, when rotated in a specified direction, will compress the fingers and when rotated in the opposite direction will release tension from the fingers. Thus, for example, means 62 may comprise a rubber band, or a spring, or any other means well known to those skilled in the art for compressing and conforming a body.

It is submitted that one of ordinary skill in the art, considering the disclosure of the Ghazizadeh patent and the gripping function of the fingers, would not find it obvious, or even advisable, to possibly compromise the gripping function of the fingers of the gripper of Ghazizadeh by imposing a "fabric, such as felt" between the fingers and the bottle that is supposed to be gripped by the fingers. When the Ghazizadeh disclosure is describing the user of an elastomeric O-ring to increase the grip by the fingers on the bottle, it is counterintuitive to reduce this grip by modifying the fingers to include a felt cushioning material.

It is therefore submitted that the cited patents, and especially the allegedly obvious combinations of Bryant, Ghazizadeh, Veras, and Suh set

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forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claim 11. Further, claims 12, 13 and 15 through 19, which depend from claim 11, also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

In contrast, in the claimed invention includes a looping means that comprises "a pair of strap portions, the pair of strap portions extending in diametrically opposite directions from the base pad, the pair of strap portions each having a free end, the looping means further comprising fastening means being positioned on each of the free ends of the strap portions for releasably fastening the free ends of the strap portions together to secure the bottle against the base pad" as set forth in claim 15, which is better suited to adapting to different sizes of bottles (especially the diameter) and the user is better able to bias the bottle against the pad using the looping means.

Withdrawal of the §102(b) and §103(a) rejections of claims 11 through 13 and 15 through 19 is therefore respectfully requested.

Part 6 of the Office Action

Part 6 of the Office Action states that claim 20 would be allowable if written into independent form with the limitations of the base claim and any intervening claims.

The above amendment incorporates the limitations of claim 1 (in its as-filed form) into the recitation of claim 20, and therefore claim 20 is believed to be in condition for allowance.

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CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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